

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CATERPILLAR, INC.

and

CAMOPLAST ROCKLAND, LTD.,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against Caterpillar, Inc. ("Caterpillar") and Camoplast Rockland, Ltd. ("Camoplast"), collectively the "Defendants", pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), for alleged environmental violations at a plant located in Emporia, Kansas. As set forth below, Defendants are and have been in violation of Section 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g).

2. The United States seeks an injunction ordering Defendants to comply with the above statutes and the laws and regulations promulgated thereunder, and civil penalties for past and ongoing violations.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), because the facility is located in this district and both Defendants are doing business in this District.

NOTICE TO STATE

5. Actual notice of the commencement of this action has been given to the State of Kansas as required under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

DEFENDANT

6. The Defendants are Caterpillar, Inc. a Delaware corporation, and Camoplast Rockland, LTD, also a Delaware corporation. Caterpillar constructed a plant located in Emporia, Kansas for the manufacture of rubber belts and wheels (the "Facility"). Caterpillar owned and operated the Facility from the time of construction in 1999 and 2000 until it was purchased by Camoplast on January 1, 2003. Camoplast currently owns and operates the Facility. The Facility manufactures rubber tractor treads and associated wheels for agricultural equipment.

7. The Defendant Caterpillar is a "person" as defined in Section 302(e) of the Clean Air Act, 42 U.S.C. §7602(e), and the federal and state regulations promulgated pursuant to the Clean Air Act.

8. The Defendant Camoplast is a "person" as defined in Section 302(e) of the Clean Air Act, 42 U.S.C. §7602(e), and the federal and state regulations promulgated pursuant to the Clean Air Act.

9. As part of the process of coating metal wheels, the Facility applies adhesive to metal surfaces to promote rubber to metal adhesion. The adhesive used in this process contains both volatile organic compounds (“VOCs”) and hazardous air pollutants (“HAPs”). The adhesive is preheated and applied to metal parts, which are also preheated to allow for quicker adhesive application. This process is hereafter referred to as the “Wheel Line”. The source of VOC and HAP emissions is the application of the adhesive and coating of metal parts. In the course of these manufacturing activities the Facility emits significant quantities of volatile organic compounds (“VOCs”), and hazardous air pollutants (“HAPs”), including ethyl benzene, toluene, and xylene, listed under Section 112(b)(1), 42 U.S.C. § 7412(b)(1) of the Act.

STATUTORY AND REGULATORY BACKGROUND **CLEAN AIR ACT REQUIREMENTS**

10. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Clean Air Act, 42 U.S.C. § 7401(b)(1).

11. Section 112 of the Clean Air Act, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants that may have an adverse effect on health or the environment.

12. Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

13. Section 112(b)(1) of the Clean Air Act, 42 U.S.C. § 7412(b)(1), lists hazardous air pollutants. Ethyl benzene, toluene and xylene are all listed as hazardous air pollutants.

14. After the effective date of the permit program under Title V of the Clean Air Act, Section 112(g)(2) of the Clean Air Act, 42 U.S.C. § 7412(g)(2), prohibits the construction, reconstruction or modification of a major source of hazardous air pollutants unless the Administrator (or the State) determines that the maximum achievable control technology (“MACT”) emission limitation under Section 112 of the Clean Air Act will be met. Such a determination will be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

15. The Title V operating program was approved in the State of Kansas on February 29, 1996.

16. Title 40 C.F.R. Part 63, Subpart B establishes the requirements for control technology determinations for major sources in accordance with Section 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g)(2).

17. Title 40 C.F.R. § 63.41, defines “Maximum Achievable Control Technology emission limitation for new sources” as the emission limitation which is not less stringent than the emission limitation achieved by the best controlled similar source, and which reflects the maximum degree of deduction in emissions that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed major source.

18. When a case-by-case MACT determination is required, the owner and operator must

submit an application that specifies a control technology selected by the owner or operator that will meet the MACT emission limitation as required by 40 C.F.R. § 63.43.

19. Pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties for violations of the Clean Air Act, not to exceed \$25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes EPA to commence an action to assess civil penalties of not more than \$27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

CLAIM FOR RELIEF

20. Paragraphs 1 through 19 are realleged and incorporated by reference.

21. The Facility is a major source of HAPs because it has the potential to emit 25 ton per year of a combination of the following listed HAPs: ethyl benzene, toluene, and xylene.

22. Since starting actual construction of the Facility, Defendants have been in violation of Section 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g), by failing to submit an application that specifies a control technology selected by the owner or operator that will meet the MACT emission limitation as required by 40 C.F.R. § 63.43.

23. Since starting actual construction of the Facility, Defendants have been in violation of Section 112(g) of the Clean Air Act, 42 U.S.C. § 7412(g), by failing to install the maximum achievable control technology on the Wheel Line.

24. Unless enjoined by an Order of the Court, these violations of the Clean Air Act and the implementing regulations will continue.

25. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant's violations, as set forth above, subject it to injunctive relief and civil penalties not to exceed \$25,000 per day of violation for violations of the Clean Air Act that occur before January 30, 1997; up to \$27,500 per day for each violation after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order the Defendants to immediately comply with the statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;
2. Order the Defendants to take appropriate measures to mitigate the effects of its violations;
3. Assess civil penalties against the Defendants for up to the amounts provided in the Clean Air Act; and

4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

JULIE M. VAN HORN
By Special Appointment as a
Department of Justice Attorney
United States Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101
Telephone: (913) 551-7889
Facsimile: (913) 551-7925
vanhorn.julie@epa.gov

ERIC F. MELGREN
UNITED STATES ATTORNEY

EMILY METZGER
ASSISTANT UNITED STATES ATTORNEY
1200 Epic Center
301 North Main Street
Wichita, Kansas 67212
Telephone (316) 269-6481
Fax (316) 269-6484
emily.metzger@usdoj.gov
Kansas Supreme Court Number 10750